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## NOTICE OF ALLOWANCE AND FEE(S) DUE

46917 7590 04/11/2008

KONRAD RAYNES & VICTOR, LLP.  
ATTN: IBM37  
315 SOUTH BEVERLY DRIVE, SUITE 210  
BEVERLY HILLS, CA 90212

EXAMINER

NGUYEN, MERILYN P

ART UNIT

PAPER NUMBER

2163

DATE MAILED: 04/11/2008

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,576

01/27/2004

David Maxwell Cannon

SJO920030087US1

3882

TITLE OF INVENTION: METHOD, SYSTEM, AND PROGRAM FOR STORING DATA FOR RETRIEVAL AND TRANSFER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1440	\$300	\$0	\$1740	07/11/2008

**THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.**

**THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.**

### HOW TO REPLY TO THIS NOTICE:

#### I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

**IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.**

# **PART B - FEE(S) TRANSMITTAL**

**Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
or Fax (571)-273-2885**

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

46917 7590 04/11/2008

**KONRAD RAYNES & VICTOR, LLP.**  
ATTN: IBM37  
315 SOUTH BEVERLY DRIVE, SUITE 210  
BEVERLY HILLS, CA 90212

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

## **Certificate of Mailing or Transmission**

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/766,576 01/27/2004 David Maxwell Cannon SJO920030087US1 3882

TITLE OF INVENTION: METHOD, SYSTEM, AND PROGRAM FOR STORING DATA FOR RETRIEVAL AND TRANSFER

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
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nonprovisional NO \$1440 \$300 \$0 \$1740 07/11/2008

EXAMINER	ART UNIT	CLASS-SUBCLASS
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NGUYEN, MERILYN P 2163 707-204000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. **Use of a Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 \_\_\_\_\_
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 \_\_\_\_\_
- 3 \_\_\_\_\_

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE (B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent) : ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies \_\_\_\_\_

4b. Payment of Fee(s); (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number \_\_\_\_\_ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

Typed or printed name \_\_\_\_\_

Registration No. \_\_\_\_\_

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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EXAMINER

NGUYEN, MERILYN P

ART UNIT

PAPER NUMBER

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DATE MAILED: 04/11/2008

## Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)

(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 500 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 500 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

**Notice of Allowability**

Application No.

10/766,576

Applicant(s)

CANNON ET AL.

Examiner

Art Unit

Merilyn P. Nguyen

2163

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to The amendment after final filed 03/10/2008 and the interview dated 03/26/2008.
2. ☒ The allowed claim(s) is/are 1-2, 4-12,50 and 52-53 and now renumber as 1-14.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date ____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date ____     | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other ____.   |

***DETAILED ACTION***

1. In response to the communication dated 03/10/2008, claims 1-2, 4-12, 50, 52 and 53 are active in this application as the result of the cancellation of claims 3, 13-49, 51 and 54, and in the condition for allowance. The reason for allowance was stated in the previous office action and is reinstated herein below.

***Examiner's Amendment***

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with William Konrad, Reg. No. 28,868 on March 26, 2008.

The application has been amended as follows:

11. (currently amended): A data backup management method, comprising:
- receiving multiple user files from at least one client station coupled to a data storage subsystem;
  - storing at least some of the multiple user files in a retrieval storage pool at a first location in the data storage subsystem;
  - creating a managed file comprising an aggregation of at least some of the multiple user files;
  - applying first predetermined criteria to a user file stored in the retrieval storage pool to designate the user file in the retrieval storage pool as one of a higher priority and a lower priority

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wherein said first predetermined criteria include the status of the user file as one of active and inactive wherein an active user file currently resides on said client station and is designated a higher priority user file, and an inactive user file once resided on a client station but has been subsequently at least one of modified and deleted on said client station, and is designated a lower priority user file;

deleting from said retrieval storage pool a user file designated as lower priority;

copying received user files to an aggregation storage pool wherein said managed file creating includes creating a managed file comprising a contiguous aggregation of said user files copied to said aggregation storage pool; and

applying second predetermined criteria to a user file received from a client station to designate the received user file as one of a higher priority and a lower priority, and wherein said ~~retrieval storage pool~~ storing includes storing received user file[[s]] designated as higher priority in said retrieval storage pool, and wherein said copying to an aggregation storage pool includes copying received user file[[s]] designated as lower priority to said aggregation storage pool.

13 (Cancelled)

52. (currently amended): The method of claim 50 further comprising applying second predetermined criteria to a user file received from a client station to designate the received user file as one of a higher priority and a lower priority, and wherein said ~~retrieval storage pool~~ storing includes storing received user file[[s]] designated as higher priority in said retrieval

storage pool, and wherein said copying to an aggregation storage pool includes copying received user file[[s]] designated as lower priority to said aggregation storage pool.

**Allowable subject matter**

3. The following is an examiner's statement of reason for allowance:

None of the references of record Cannon (US 6,098,074) and Mattis (US 6,453,319) teaches or suggests the claimed (Claims 1 and 50) invention having, in addition to the other limitations in the claims, the limitation of "first predetermined criteria include the status of the user file as one of active and inactive wherein an active user file currently resides on said client station and is designated a higher priority user file, and an inactive user file once resided on a client station but has been subsequently at least one of modified and deleted on said client station, and is designated a lower priority user file".

None of the references of record Cannon (US 6,098,074) and Mattis (US 6,453,319) teaches or suggests the claimed (Claim 11) invention having, in addition to the other limitations in the claims, the limitations of "first predetermined criteria include the status of the user file as one of active and inactive wherein an active user file currently resides on said client station and is designated a higher priority user file, and an inactive user file once resided on a client station but has been subsequently at least one of modified and deleted on said client station, and is designated a lower priority user file" and "applying second predetermined criteria to a user file received from a client station to designate the received user file as one of a higher priority and a lower priority, and wherein said storing includes storing received user file designated as higher priority in said retrieval storage pool, and wherein said copying to an aggregation storage pool

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includes copying received user file designated as lower priority to said aggregation storage pool”.

None of the references of record Cannon (US 6,098,074) and Mattis (US 6,453,319) teaches or suggests the claimed (Claim 53) invention having, in addition to the other limitations in the claims, the limitations of “applying second predetermined criteria to a user file stored in the retrieval storage pool to designate the user file in the retrieval storage pool as one of active and inactive wherein an active user file currently resides on said client station and is designated a higher priority user file, and an inactive user file once resided on a client station but has been subsequently at least one of modified and deleted on said client station, and is designated a lower priority user file...wherein each client station has an identity and said first predetermined criteria include the identity of the client station which was the source of a received user file wherein a user file received from a first client station is designated a higher priority user file and is stored in said retrieval storage pool, and a user file received from a second client station is designated a lower priority user file and is stored in said aggregation storage pool.”

Dependent claims are allowable because they depend from base claim.

4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance”.

***Conclusion***

5. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) day from the day of this letter. Failure to respond within the period for response will cause the application to become abandoned (see M.P.E.P 710.02(b)).

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Timpanaro-Perrotta US Patent No. 6,880,051 discloses method, system, and program for maintaining backup copies of files in a backup storage device.

Eatough US 20020087623 discloses method and apparatus for determining network topology and/or managing network related tasks.

Kenley US Patent No. 5,276,867 discloses digital data storage system with improved data migration.

Fish US Patent No. 7,124,152 discloses data storage device with deterministic caching and retention capabilities to effect file level data transfers over a network.

Fera US Patent No. 7,051,044 discloses method and system for remotely managing communication of data used for predicting malfunctions in a plurality of machines.

Matsuda US Patent No. 7,020,668 discloses device for retaining important data on a preferential basis.

Hild US Patent No. 6,088,706 discloses system and method for managing replicated data by merging the retrieved records to generate a sequence of modification.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marilyn P Nguyen whose telephone number is 571-272-4026.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.

Marilyn Nguyen

AU 2163

/don wong/

Supervisory Patent Examiner, Art Unit 2163